

**MINUTES OF THE CITY PLANNING COMMISSION  
J. MARTIN GRIESEL ROOM**

October 1, 2004

9:00 A.M.

**PRESENT**

***Appointed Members:***

Don Mooney, Jim Tarbell, Valerie Lemmie, Terry Hankner, Jackie McCray  
and Caleb Faux

***Community Development and Planning Staff:***

Margaret Wuerstle, Felix Bere, Steve Briggs, Larry Harris and William  
Forwood

***Law Department:*** Dotty Carman and Julia Carney

***Buildings and Inspections:*** Reggie Lyons

***Transportation:*** Martha Kelly and Jack Martin

**CALL TO ORDER**

Mr. Mooney called the meeting to order.

**MINUTES**

The minutes of the September 10<sup>th</sup> and September 17<sup>th</sup> meetings were submitted for approval.

**MOTION:** Ms. McCray -- moved approval on both

**SECOND:** Ms. Hanker – second

**VOTE:** Approval – all ayes (6-0) motion carried

**CONSENT ITEMS**

**ITEM #1** – Re-zone request for the property at 1317 Cedar Avenue in College Hill for a Health Care Facility. The zoning on this property was changed as a result of the Zoning Code re-write process.

**ITEM #2** – Re-zone request for the property at 1734 Avonlea from S4-R3. The zoning on this property was changed as a result of the Zoning Code re-write process.

**ITEM #3** – A Report And Recommendation on an Ordinance authorizing the sale of surplus City-owned property located on Lion Street west of Delta Avenue and Ruehlman Street north of Lion Street in Hyde Park and Columbia Tusculum.

**ITEM #4** – A Report and Recommendation on an Ordinance to accept and confirm the dedication of permanent easement to public use for construction, operation and maintenance of storm sewers and appurtenances in accordance with a plat entitled “Storm Sewer Easement Plat, Cincinnati Board of Education”.

Margaret Wuerstle, Chief Planner, clarified on Item #2 the zone code was SF4 to R3 (the equivalent to the R-3 now would be RMX).

**MOTION:** Ms. Lemmie moved approval of consent items

**SECOND:** Ms. McCray

**VOTE:** All ayes (6-0), motion carried.

## **DISCUSSION ITEMS**

Margaret Wuerstle (Chief Planner) told the Planning Commission that the Ackerman Group had requested to hold **Item #9**. Mr. Mooney agreed. Item #9 would be held until the October 15, 2004 meeting of the Planning Commission.

**ITEM #5** – A Report and Recommendation on the demolition of a garage structure at 2731 Observatory Avenue located within an IDC boundary.

Larry Harris (Staff Planner) presented this Report and recommends the demolition permit of a garage on Observatory Avenue within this IDC. A doctors' office that is a legally existing non-conforming use has a garage located on the site. The proposed demolition permit has been processed by Buildings & Inspections. This demolition will eliminate the garage to allow repaving for parking. This is not a change of use or change of lot. Mr. Harris recommends approval.

Ms. Hankner asked if this were a medical office. The response was yes. Ms Lemmie asked if there had been any community comments. Even after sending out notification to property owners and community council Mr. Harris had not received any response.

**MOTION:** Ms. Hankner moved approval

**SECOND:** Ms. McCray

**VOTE:** All ayes (6-0), motion carried.

**ITEM #6** – City-County Land Transactions: Paddock Park/Millcreek Psychiatric, Drake Hospital, Hillcrest School Site, and Eggleston & Reading Park Lot. This item was tabled from the Planning Commission meeting of September 17<sup>th</sup> as presented by Caroline Kellam (Staff Planner).

Ms. Kellam noted the Planning Commission had tabled this item from the September 17<sup>th</sup> meeting and asked the staff to examine the following issues:

- 1) investigate for any recent proposed plans regarding the triangular parking lot owned by B&B Parking at Eggleston and Reading Road. Staff inspected files for proposals/plans for this triangle and found no such plans. The St. Xavier Park plan prepared by DCI in 2000 showed that nothing was proposed for this site. The Parks Department had prepared a plan for further landscaping for the Central Parkway area. No other plans were approved that involved the triangle.
- 2) notify community groups and citizens i.e., Downtown Residents Council, DCI, Mr. Baum, Mr. Chavez and Mr. Frutkin and the three groups and citizens were notified, and
- 3) Staff should review the DOT study. This study showed a concept to extend Central Parkway. This was a very informal study. No money or plans were finalized to pursue this concept. Planning staff pointed out that representatives of the DOT staff are present at this meeting if anyone had any specific questions on the informal study.

The findings of the staff resulted in the recommendation of the land swap as previously recommended between the City and County that would include the triangle at Eggleston and Reading Road.

Ms. Rose Nelson from the Bond Hill Community, former president of its Community Council, came forward to speak in favor of certain parts of the land transfer to the County. However, she was against the City allowing the use of certain parcels of land as detention centers. She felt the City should do everything in its power to make sure that these detention centers do not come to fruition within the City or Bond Hill. She felt certain that within a short time this land would be developed by the County from a parking lot to a detention

center (1,050 beds) and that would be a negative move for the City and the surrounding city area. She also felt that the juvenile detention center (60 beds) in the Bond Hill area was a very bad move on the part of the City.

Mr. David Krings, the Administrator of Hamilton County, then came forward and spoke about the disagreement with the City that has gone on for about 10 years over the use of the property owned by the County in Bond Hill. City Council recently put aside \$800,000 for the purpose of settling the City/County disagreement. The County Commissioners, to reconcile the disagreement, asked Mr. Krings to begin discussions with the City Administration in order to settle the lawsuit.

Everyone involved felt the land swap package would be a quiet, easy way to settle the lawsuit between the City and County. The parcel that has gotten the most attention recently is the B&B Parking Lot at the corner of Eggleston and Reading Road. The current use and the proposed use are for parking of County and employee vehicles only. Any talk of the land to be developed as a detention center is only conjecture.

The County has requested suggestions on how to handle the future needs for both offices and housing of inmates from a number of organizations. They have yet to receive any proposals that we find interesting enough to invest in a study. He stated that if the City were to come up with a truly good economic development plan the County would work with the City to achieve a goal that would be advantageous to both.

There are no other plans for the use of this land. The County's only intention is to improve the landscaping to make it more appealing.

Mr. Nathaniel Livingston, a resident of Walnut Street in Over-the-Rhine, came forward to speak against the transfer of the Eggleston triangle parcel to the County. He said that neither the OTR Community Council nor the Chamber of Commerce had been notified of this land swap, nor have these organizations been asked for input. There had been private plans for a professional baseball stadium as a gateway development, which was turned down. In 1996 a plan was presented for a grocery store and housing. He stated it would be beneficial to postpone the decision on this item to give time for research or to work out an economic development plan for the area.

Mr. Livingston felt that it was more than likely that the land would eventually be used as a detention center and that type of use would have a very negative impact on the neighboring areas. Both the County and the sheriff's office have made public statements on the needs for more jail space. A detention center in an area neighboring so close to Over-the-Rhine would have a terribly negative effect on this area, as well as the Main Street development area. Using the Bond Hill site as a detention center is not a good idea. Mr. Livingston requested that the City hold the County to their promise, or better yet postpone their decision until a plan can be developed for this area for an economic improvement.

Mr. Robert Chavez, developer, reported that this land and the surrounding area would be a great gateway for the City of Cincinnati. In February of 1986 his company signed a plan with the City for the development of a master plan for the 20 + acres that make up Broadway Commons and, at that point the Eggleston triangle was not part of that plan. In August 1987 the Urban Design Review Board approved the master plan that included the Eggleston triangle. Subsequent to that the City of Cincinnati re-zoned the area as part of a new downtown development district to accommodate the Broadway Commons planning effort. He stated there was a plan, it was approved, and it included the triangle.

Subsequent to that, the County brought up the expansion of the justice center. The City traded the County workhouse site for the triangle on which the County subsequently built the minimum-security facility. He was concerned that the Staff Planner did not present any of this history during her presentation and now we are back to the County deleting the jail in Camp Washington and may soon be presenting a plan for a new jail in the triangle.

Mr. Tarbell asked Mr. Scott Stiles, who represented the City on the Land Swap, to explain the costs of the different portions of land included in the swap, as well as who determined that the triangle at Eggleston should be included. Mr. Stiles explained that he had not been included in those discussions because Mr. Tim Riordon was the City representative at that time. He could not therefore respond to the question of who suggested the Eggleston and Reading Road triangle. However, Ms. Lemmie responded that the County had brought it to the table.

Mr. Stiles said he could give the fair market value on a number of the properties included in the swap to settle the lawsuit. The Bond Hill parcel, had a preliminary appraisal of \$1.5 million, the City's appraisal was \$1.465 million. The Millcreek property is valued at \$863,000. The approximate 85 acres at Hillcrest is appraised at \$4.6 million. The term of the lease on the Eggleston triangle was originally 90 years and has 70 years left at \$1.00 a year. Mr. Stiles did not have fair market value information on the Armory property. Ms. Lemmie informed the Planning Commission that because the Armory had a long-term government use, it had no fair market value. This premise also applied to the Hillcrest property.

Ms. Hankner said that the purpose of the Planning Commission is to decide the best use of land within the City and that the direction of the discussions at the Planning Commission meetings should be to that end.

Mr. Tarbell stated that City Council had only received notification on this transaction during August and he felt this was not enough time to come to a decision. He also wanted to know who came up with the list of land parcels for this lawsuit settlement.

Mr. Krings of Hamilton County said that he had developed the list. Originally the list had quite a few land items possibilities on it and he had worked on it with Tim Riordon to narrow it down to the subject properties included in the proposed swap.

Mr. Faux suggested that an easement be placed on this B&B Parking Co. lot to describe uses that cannot be part of the future development for this property. The perspectives of Mr. Livingston and Mr. Chavez regarding a good economic development plan for this area should be included. Therefore, Mr. Faux suggested a legal-written agreement between the County and the City be framed to ensure that no inappropriate use of this area could happen in the future. He felt that a legal agreement would cover the matter in the future. However, Mr. Krings said that he felt the County would not want to be encumbered with such a legal hindrance. Mr. Krings suggested that if there were a plan available to bring forward now and he would present it to the County Board for consideration.

Ms. Hankner asked for clarification on the conditional use process. Ms. Wuerstle indicated that a memo had been included in the Planning Commission's packets in which it was stated that the conditional request would go before the Hearing Examiner. A public meeting is required for conditional use hearings in which surrounding property owners, as well as Community Councils, would be notified. The Hearing Examiner can approve any plan as proposed or impose conditions, or he can deny it. Ms. Carman said that any appeals to conditional use decisions are through the City Council.

**MOTION:** Ms. McCray moved approval  
**SECOND:** Ms. Lemmie  
**VOTE:** Ayes: (4) motion carries  
Nays: (2) Mr. Mooney and Mr. Faux

Mr. Tarbell voted to support the motion, however, he would have preferred another delay in the decision because City Council had such a short notice and stated that there could still be issues regarding Drake Hospital and the Bond Hill portion.

**ITEM #7** – PD #15 Queen City Barrel property demolition approval.

Mr. Steve Briggs (Staff Planner) presented this item. He referenced the fire involving this property in August 2004 and explained that some of the structures that are left standing present a great danger. The Buildings & Inspections Department agreed the demolitions should take place as quickly as possible. Since these buildings are in a Planned Development, the Planning Commission must approve any changes on the property. The proposed demolitions include the Queen City Barrel structures and several other buildings that are on the property.

**MOTION:** Ms. Hankner moved approval to allow demolitions as determined by the Department of Buildings and Inspections.  
**SECOND:** Ms. Lemmie  
**VOTE:** Ayes: (6-0) motion carries

**ITEM #8** – Zoning code text changes:

\*Sections held from the September 10, 2004 Meeting:

- \*§ **1401-01 Public Nuisance** – New Definition
- \*§ **1405-05 Use Regulations – Residential Multi-family Districts** – L7 Condition
- \*§ **1409-29 Outdoor Retail Sales** - Location of Sales Area

**These sections were held over again until the October 15, 2004 meeting.**

Sections yet to be considered:

- § **1401-01 Fence** - Definition
- § **1401-01-H1 Height, Building** - Definition
- § **1401-01-M3 Medical Services and Clinic** – Definition
- § **1401-01-O Office** – Definition
- § **1405-09 Truck Docks; Loading and Service Areas** – Modification
- § **1421-01 Accessory Residential Structures** - Location
- § **1421-01 Accessory Residential Structure** - Setbacks
- § **1421-33 Fences and Walls** - Maximum Height
- § **1425-03 Requirements for Off-Street Parking and Loading** - Modification
- § **1425-27 Parking Lot Screening** – Modification
- § **1425-37 Surfacing, Drainage and Grade of Parking & Loading Facilities** - Modification
- § **1427-03-N1 Nonconforming Sign** – Modification
- § **1427-45 Maintenance, Abandonment and Removal** – Of signs
- § **1443-05 Public Hearing Schedule and Notice** – Noticing Requirements
- § **1427-45 Maintenance, Abandonment and Removal** – Of signs

§ **1401-01 Fence** -- Mr. Mooney noted this item needed some work. Dotty Carman and Julia Carney (Law Department) were present for opinions. Ms. Wuerstle explained the language originally stated “and any other material” to allow for any construction materials that might be developed in the future and which could be reasonably used as fencing. However, the language is so open that it could lead to items such as blue tarps or even beer ads being used as fences. These were actual examples of requests received by the zoning staff. It was suggested that the phrase “or determined appropriate” instead of the proposed “and” should be used. There was a request to leave in the old statement about regulating gates. Mr. Mooney suggested taking out the proposed new last sentence. Ms. Hankner felt the very last sentence was a duplicate. It was determined that the proposed last sentence would be removed and the original statement on gates would remain.

**MOTION:** Ms. Hankner moved approval with the changes discussed.  
**SECOND:** Ms. Lemmie  
**VOTE:** Ayes: (6-0) motion carries

**§ 1401-01-H1 Height, Building** – Mr. Reggie Lyons of Buildings & Inspections explained that quite often applicants raise and lower the dormers in order to gain more height in a structure. Therefore, some type of change must be inserted to keep a firmer guide on the City's standards and codes. Mr. Lyons felt the proposed language provided more consistency.

Mr. Mooney, Ms. Hankner, and Mr. Faux felt the homeowners should have the benefit of choice, as long as the dormer is not so disproportionate to the home roofline as to be offensive. Ms. Lemmie felt a reasonable amount of leeway would be appropriate. Mr. Faux indicated that the code should allow for some flexibility, but within limits.

**MOTION:** Mr. Faux made a motion not to change this section of the Zoning Code and leave it as adopted in January, but make the typographic corrections if needed.  
**SECOND:** Ms. Lemmie  
**VOTE:** Ayes: (5) motion carries  
Nays: Ms. McCray

Ms. Lemmie had to leave the meeting, but before she left she requested an update of the 1984 rules and procedures for the Cincinnati Planning Commission. She requested that the Planning staff be assigned this task. Ms. Hankner was very much in favor of this update.

**MOTION:** Ms. Lemmie moved approval  
**SECOND:** Ms. McCray  
**VOTE:** Ayes: (6-0) motion carries

**10:20 a.m. MS. LEMMIE HAD TO LEAVE THE MEETING AT THIS TIME.**

**§1401-04-M3 – Medical Services and Clinic** – Ms. Wuerstle explained the problems of medical clinics having the same requirements for parking as other types of offices. However, small doctors office consisting of three or less professionals are comparable to other general offices and should be allowed the same parking requirements which in the current zoning code is one space for every 400sq. ft. of floor area. Medical services and clinics are required to have one parking space for every 150 sq. ft. of floor area. Dotty Carman explained that Council members had instructed Margaret Wuerstle to change this item by passage of an ordinance. Ms. Wuerstle felt it was necessary to strike a balance recognizing the impacts of large medical offices on adjacent neighborhoods.

Ms. Hankner suggested that the word "may" be removed from the last line on the idea of medical clinics with laboratories, laboratories are not required but the phrase should read, "includes" and the sentence should read "medical clinics includes medical and dental laboratories included to the medical office use be adopted to ensure that both of these sections are consistent.

Also **§1401-01-O Office is a companion section to §1401-01-M3 Medical Services & Clinics** and need to also be adopted to ensure that both of these sections are consistent.

**MOTION:** Ms. Hankner moved approval  
**SECOND:** Ms. McCray  
**VOTE:** Ayes: (5-0) motion carries

**§1405-09 Truck Docks: Loading and Service Areas** – Margaret Wuerstle explained that the word “preferred” is too flexible and that if the regulation wants the loading docks located away from residential district lines and to the rear of the building we have to say that developer will not locate loading docks away from residential uses just because the City “prefers” they do. However if there are reasons why a developer can’t comply with the regulation, then they need to justify that reason. It should be the responsibility of the developer to justify why this regulation can’t be met. The new language reflects these concerns. Reggie Lyons also suggested that the developer should have to show how they would mitigate impacts.

**MOTION:** Ms. Hankner moved approval  
**SECOND:** Ms. McCray  
**VOTE:** Ayes (5-0) motion carries

**§1409-29 Outdoor Retail Sales** -- Ms. Wuerstle explained that this was another item using a term that is too flexible: “where ever possible”. Originally the Staff was attempting to build in flexibility, but as written it goes too far. We need to have facts to show that the outdoor sales can’t adjoin the principle structure.

Mr. Mooney asked for a definition of “adjoining”. Dotty Carman defined adjoining. Ms. Wuerstle said that the issue was to assure that stores that are set back would not have product at the curb/sidewalk. Mr. Mooney felt this is not a problem item. Ms. Hankner felt it was a better definition than “whenever possible”.

**MOTION:** Mr. Faux moved approval  
**SECOND:** Ms. McCray  
**VOTE:** Ayes (5-0) motion carries

**§1421-01 Accessory Residential Structures** – Location – Ms. Wuerstle explained that enclosures for pets can often become offensive to the neighbors when placed right on the property line. The old code required placement to be 20 feet from the lot line.

Mr. Lyons explained that the enclosures are usually a kennel 10 feet by 20 feet wide, not a fenced yard. It would be a preferable situation to have multiple dogs running the yard rather than a small enclosure right at the property line.

Ms. Carman brought up the fact that people with smaller lots like in Mt. Adams would be excluded from having pet enclosures if the distance for the enclosure were increased 20 feet. Mr. Faux felt a compromise of between 3 feet and 20 feet could also work. A discussion developed on choosing another distance besides 20 feet. Mr. Mooney indicated a preference to leave this item alone since there has been no general public outcry about a problem and that individuals could call their particular council members if there is a true problem. Ms. Hankner proposed using 20 feet as taken from the old code, and anyone with a situation involving a smaller lot would have to apply for a variance.

**MOTION:** Ms. Hankner moved approval as proposed with the 20 ft. set back.  
**SECOND:** Ms. McCray  
**VOTE:** Ayes (4-0) motion carries  
Nays (1) Mr. Mooney

**§1421-33 Fences and Walls** – Maximum Height. Mr. William (Skip) Forwood spoke to this item that is related to items 1421-25 and 27. One section of the code requires that a parking lot in a residential section provide a fence that is 100% opaque. Another section of the code says it can be no more than 50% opaque. One section must be changed to accommodate the other. Otherwise a variance would be required in every

situation. In the alternative the Commission might want to consider changing the language to state “fences are required to be no more than 50% opaque, except in those circumstances where they are being used as parking screening”.

Ms. Carman felt that the item was very clear and specific. There are “fences and walls” and we have “fences around parking lots”. Therefore any change is not necessary. Mr. Forward said that the zoning people have been requesting variances.

Mr. Forwood also explained that there have also been questions on height, definition of front, side and rear yard. The illustration indicates a rear yard that faces on a public street. The limitation of 4 feet only applies to the front and side, but not to a rear yard. This would allow a front and side yard fence 4 feet and 50% opaque, while the rear yard fence would be 6 feet and 100% opaque. He proposed changing section 1421-33 to “any front, corner/side or rear yard” or adding the phrase “abutting the right of way”.

Mr. Mooney felt that the discussion was going toward more changes than what were initially presented. He suggested tabling this item. Mr. Mooney suggested a more finished proposal be presented to the Planning Commission and then a more informed decision could be made. This item was tabled.

**§1425-03 Requirements for Off-Street Parking and Loading – Modification.** Ms. Wuerstle explained that existing buildings that have no off-street parking could not be re-utilized unless the owner finds off-street parking. The proposed changes would allow for re-utilization of buildings without having to come into full compliance with the parking regulations that are part of this code. Mr. Mooney asked for a legal opinion from Dotty Carman. She mentioned past experience when bars change hands without the addition of parking spaces.

Reggie Lyon used the example of a church in Oakley that was 80 years and old built to the property line. When the church moved out, a charter school was suggested. The old code required no hearing if the new tenant had a similar use type to the old tenant. Mr. Faux agreed but only when the use remains the same or the user type remains the same.

However, Mr. Mooney felt when the use changes from a church mainly used on Sundays, to a school that is used every day there will be a substantial impact on the neighborhood. Mr. Mooney and Ms. Hankner both felt that without representatives from the community at this meeting they were reluctant to make changes that seem to be drastic.

Ms. Wuerstle asked Mr. Forwood to explain the Globe Furniture Building situation. Mr. Forwood said the building was being changed to office space, which required 220 spaces, whereas the previous use required 40 parking spaces. So the Historic Board granted a variance for the difference.

At this time Ms. Gerri Kraus, homeowner, asked to be heard by the Planning Commission. In her neighborhood they have bed and breakfasts. The neighborhood association did not want this section to be less restrictive because of the parking impact on the neighborhood.

Ms. Hankner suggested leaving the section as is. The Planning Commission’s objective is to simplify things and limit hearings. However, on this issue there is such an impact on neighborhoods because of parking she felt hearings should be required. The only exemption should be when there is no change of use or a new tenant but with the same use. Ms. Wuerstle suggested coming up with new language and presenting it to the Planning Commission. This item was tabled pending the receipt of new language.

Ms. Kraus asked about the public nuisance section being postponed. Ms. Wuerstle said they had not yet found a definition and until one is found this item will be postponed. Mr. Mooney agreed.



Mr. Faux asked to move forward to item §1443-05 Public Hearing Schedule and Notice – Noticing Requirements. He requested action on this item before the meeting adjourned. He would move approval.

**MOTION:** Mr. Faux moved approval  
**SECOND:** Ms. McCray  
**VOTE:** Ayes (5-0) motion carries

At this time Mr. Tarbell asked for a reconsideration of Item #9 on the City/County Land Swap. Mr. Mooney felt it would not be appropriate under the circumstances because the people who had been there for the vote had left the meeting and were no longer present for a new vote. Also, the public who were present during that part of the meeting and gave testimony had left. Mr. Mooney suggested Mr. Tarbell bring it up at another meeting. Ms. Carman indicated that since there was a quorum present a vote could take place.

In other business Ms. Wuerstle brought up the fact that at the last meeting, the Kennedy Heights IDC was presented and a recommendation made to approve a zoning change. Staff could not get this item on an agenda for the Neighborhoods Committee until October 5, 2004. The City Council at their last meeting created a new IDC #75 in order to protect the property until this item could be heard by the Neighborhoods Committee and acted on by Council.

Mr. Faux moved the Planning Commission's acceptance of Council's procedure regarding the IDC #75.

**MOTION:** Mr. Faux moved approval  
**SECOND:** Ms. McCray  
**VOTE:** Ayes (5-0) motion carries

Move for adjournment.

**MOTION:** Mr. Faux moved approval  
**SECOND:** Ms. Hankner  
**VOTE:** Ayes (5-0) motion carries

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Margaret A. Wuerstle, AICP  
Chief Planner  
Community Development & Planning

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Donald Mooney, Chair  
City Planning Commission

Date: \_\_\_\_\_

Date: \_\_\_\_\_